

**KENTUCKY PERSONNEL BOARD
MINUTES OF JULY 13, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on July 13, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Donald W. "Don" Blevins, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member
Linda R. Morris, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 18, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Dr. Stevens seconded, and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that he and Mr. Crocker and some of the hearing officers attended hearing officer's training conducted by the Attorney General's office.

Mr. Sipek advised that with the new fiscal year, the Board faces challenges with caseloads and the amount of resources available; but will continue to move forward as best as possible.

Mr. Sipek stated that the committee (Blevins, Gillis and Sipek) chose three applicants for the merit employee Board member position. The Board will be interviewing them today and will select one to replace Ms. Gardner.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report. Ms. Mary Elizabeth Harrod, Commissioner of the Department of Human Resources Administration, was also present.

Ms. Bevington stated that on July 1, 2012 the Personnel Cabinet will provide EEO information on registers, on a voluntary basis by applicants, to be used for selection of candidate pools.

Ms. Bevington stated that as the Board is aware, regulatory changes were made to amend the evaluation system and forms. At the request of the Board, Ms. Bevington reported on the evaluation process as follows:

In the past, upon receipt of all the evaluations from the different agencies, the Personnel Cabinet performed an internal technical audit to ensure that all evaluations were completed, signed, and the points added up to 100. Now, there is a more complex internal review. The process involves the Performance Management Group under the Department of Human Resources; Classification and Comp; Personnel Employee Management (to look at employees past disciplinary actions); and, as needed, the Legal Office.

Ms. Harrod advised that one of the changes in the regulation is that all supervisors are required to have Supervisor's Training prior to the evaluation process. Additionally, the Cabinet is in the final stages of providing on-line evaluation training for all employees which will be available in 2013.

After technical audit is completed, a quality review is performed. Specifically, duties and expectations of employees set by the supervisor are looked at to ensure they are appropriate for the classification and position description. A desk audit is performed if there are questions.

A non-compliance audit is conducted at the end of the calendar year. All the scores are loaded into system. From there, agencies are contacted to conduct an evaluation on any employee who has not had an evaluation. All agencies are given a “drop dead” due date and those not in compliance are reported to the Legal Office.

A suspension audit is performed to see whether an employee received a suspension during the year and that it is noted on the interim review.

An unacceptable ratings audit is performed to determine whether an employee in the bottom two categories had been demoted or dismissed.

Performance Management Consultants review the audit results with the agencies and recommend training, regulatory changes or coaching.

Mr. Blevins asked about the ratings for 2010, with “outstanding” at 38%; “highly effective” at 43%; and “unacceptable” at .07%, as reflected in the chart provided by the Cabinet. Ms. Harrod replied that at times ratings are inflated, especially during bad economic times, when there is a benefit attached (annual time). Supervisors want to give employees top ratings. Mr. Blevins would like to see how the Cabinet’s ratings compare against industry or other governmental units across the nation.

Ms. Bevington stated that the chart does not reflect if an evaluation was reconsidered. The “non-compliance” category on the chart has been followed-up on, but the results are not noted on the chart.

Ms. Bevington noted that 2011 is the first time the evaluation ratings were loaded into the Kentucky Human Resource Information System (KHRIS).

Ms. Bevington advised that tracking may take months, and sometimes years, after the initial information is loaded. It is a very complex system.

Chairman Sapp asked at what point are the non-compliant ratings completed. Ms. Harrod stated they were completed by the second or third quarter.

Mr. Blevins asked whether an employee who voluntarily resigns from state government is given an exit interview. Ms. Harrod replied that some agencies do and some do not. Ms. Bevington stated that there are no statutes or regulations regarding exit interviews.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. ORAL ARGUMENTS

A. Rachel Bowling v. Cabinet for Health and Family Services (Deferred from June Board)

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Michael Board. After presenting oral arguments, the parties answered questions from the Board.

B. Charles Lickteig v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were counsel for Appellant, the Hon. Thomas Clay, and counsel for Appellee, the Hon. Stafford Easterling. After presenting oral arguments, the parties answered questions from the Board.

C. Terri Richardson v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Michael Board. After presenting oral arguments, the parties answered questions from the Board.

D. Keith Sansom v. Justice and Public Safety Cabinet (KSP)

Present for oral argument were counsel for Appellant, the Hon. Gail Williams, and counsel for Appellee, the Hon. Morgain Sprague. After presenting oral arguments, the parties answered questions from the Board.

6. MOTIONS

Billie Johnson v. Transportation Cabinet --Joint Motion to Withdraw Appellee's Exceptions

Mr. Sipek stated that both parties agreed to the withdrawal of Appellee's exceptions and that the Hearing Officer's recommendation be accepted. Mr. Sipek stated that if the Board adopts the motion in whole, then they are adopting the Hearing Officer's recommended order.

Mr. Hutcheson moved to accept the Joint Motion, as a whole, to withdraw Appellee's exceptions and to accept the recommended order sustaining the appeal to the extent of reinstating Appellant with a thirty-day suspension. Dr. Stevens seconded and the motion carried 5-0.

7. INVESTIGATIONS

- A. Dept. of Juvenile Justice, Lincoln Village Youth Detention Center
Request by Thomas Brandenburg, Former Facilities Superintendent
(Tabled from May meeting; deferred from June meeting)

Mr. Brandenburg was present and the Hon. LaDonna Koebel, Assistant General Counsel for the Department of Juvenile Justice (DJJ), was present.

Ms. Koebel stated that after the June meeting, she spoke with Mr. Brandenburg and offered a proposal. That is, the Agency offered to destroy the memorandum from Ms. Grady, that the Agency in the future would not do post-employment letters like that, nor keep a disciplinary file, but would instead incorporate everything in an employee's personnel file; or open a litigation file.

Ms. Koebel stated that Mr. Sipek advised her by e-mail to be prepared to respond about alleged rumors that Terry Morgan had "fast-tracked" approval to get Mr. Brandenburg's former position. Ms. Koebel described the process taken to hire Mr. Morgan and provided documentation to the Board. Ms. Koebel stated that the Agency followed hiring guidelines and that Mr. Morgan was the best candidate for the position. Ms. Koebel noted that Mr. Morgan took a demotion.

Mr. Brandenburg stated that Terry Morgan's wife (Teresa) is Ms. Grady's supervisor. According to Mr. Brandenburg, he was told by informants that it was pre-selection that Terry Morgan get his former job.

Chairman Sapp asked Mr. Brandenburg if he had filed ever filed a grievance concerning the harassment, which Mr. Brandenburg stated he had not.

Mr. Hutcheson's understanding was that the issue in this matter was the memorandum prepared by Ms. Grady, not hearsay about "fast-track hiring." Mr. Hutcheson stated that the Agency has agreed to remove the memorandum. Mr. Hutcheson stated he did not believe he would go along with an investigation since Mr. Brandenburg had resigned and the Board has budget concerns.

Mr. Brandenburg responded that he requested an investigation because he believed he was forced to resign due to the harassment of Ms. Grady, and through this process he found out about the memorandum. He did not know at the time of his resignation that he could file an appeal.

Mr. Gillis stated that Mr. Brandenburg's letter of resignation does not mention that he was "forced out."

Mr. Gillis moved to deny the investigation, that the memorandum be removed from Mr. Brandenburg's file, and that the matter be turned over to the Ethics Commission for review. Mr. Hutcheson seconded and the motion carried 5-0.

B. Referral of Personnel Matters in the Auditor's Report on the Kentucky Department of Agriculture (**Tabled from May meeting; Deferred from June meeting**)

C. Anonymous Request for Investigation of Department of Agriculture (**Deferred from February**)

Mr. Sipek stated that the Board received a copy of a letter from Ms. Holly VonLuehrte at the end of the June Board meeting in response to Finding #20 of the Auditor's Report.

Mr. Hutcheson stated that there needs to be further investigation into both the Auditor's Report and the Anonymous Request for Investigation and that they should be consolidated so that the cost is not doubled.

Mr. Hutcheson moved to consolidate "B" and "C" and to further investigate both matters together. Mr. Gillis seconded and the motion carried 5-0.

8. CLOSED SESSION

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings

Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:35 a.m.)

Mr. Blevins moved to return to open session. Mr. Gillis seconded and the motion carried 5-0. (12:20 p.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Rachel Bowling v. Cabinet for Health and Family Services
(Deferred from June meeting)

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the recommended order sustaining the appeal. Dr. Stevens seconded and the motion carried 5-0.

B. Charles Lickteig v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to note Appellant's exceptions and oral arguments and to accept the recommended order sustaining the appeal to the extent of removing "with prejudice" from the letter accepting resignation. Mr. Blevins seconded and the motion carried 4-1 with Dr. Stevens opposing.

C. Terri Richardson v. Cabinet for Health and Family Services

Mr. Blevins moved to note Appellee's exceptions, Appellant's response and oral arguments, and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 5-0.

D. Keith Sansom v. Justice and Public Safety Cabinet (KSP)

Dr. Stevens moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the recommended order sustaining the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

E. Holly Jackson v. Cabinet for Health and Family Services
 (Deferred from June meeting)

Mr. Blevins moved to note Appellee's exceptions, Appellant's response (returned as untimely), oral arguments, and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Mr. Gillis seconded and the motion carried 5-0.

F. Billie Johnson v. Transportation Cabinet
 (Appel decided under Motions.)

G. Matthew Gravitt v. Transportation Cabinet

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

H. Julia Johnson v. Cabinet for Health and Family Services

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

I. Monica Napier v. Education and Workforce Development Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Further, he recommended that the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order be copied to the Executive Branch Ethics Commission for any action they deem appropriate; and that the staff write a letter to the Agency stating the Board would have supported stronger disciplinary action. Mr. Blevins seconded and the motion carried 5-0.

J. Kathryn Parrish v. Office of the Attorney General

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

- K. Joseph Smith v. Justice and Public Safety Cabinet (Corrections) (2 appeals)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

- L. Shawn Wagley v. Education and Workforce Development Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- M. Ikedi Ikediobi v. Cabinet for Health and Family Services
N. Howard L. Jackson v. Tourism, Arts and Heritage Cabinet, Kentucky State Fair Board

Mr. Gillis moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

10. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

- A. Katherine Ray v. Cabinet for Health and Family Services
B. Rhonda Berry v. Public Protection Cabinet (Insurance)
C. Donald Goodman v. Transportation Cabinet

11. SETTLEMENTS

Mr. Gillis moved to accept the following settlements *en bloc*, as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Dr. Stevens seconded and the motion carried 5-0.

- A. Darlene Bussell v. Economic Development (3 appeals)
- B. Teresa G. Hall v. Finance and Administration Cabinet
- C. Heather Parker v. Justice and Public Safety Cabinet (Corrections)
- D. Joseph Ross v. Labor Cabinet
- E. Michael Bennett v. Public Protection Cabinet

12. SECOND CLOSED SESSION

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Blevins seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (12:30 p.m.)

- Interviews (Board Member Vacancy)

Dr. Stevens moved to return to open session. Mr. Blevins seconded and the motion carried 5-0. (1:55 p.m.)

13. BOARD MEMBER VACANCY

Dr. Stevens moved to recommend Ms. Ramona Herndon-Griffin as the merit state employee Board Member to fill the vacancy created by Susan Gardner's resignation. Mr. Gillis seconded and the motion carried 5-0.

14. **OTHER**

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Dr. Stevens moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (2:00 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Donald W. Blevins, Member